



ITEM FOR ENVIRONMENTAL BOARD AGENDA

**BOARD MEETING
DATE REQUESTED:** May 4, 2011

**NAME
OF PROJECT:** CREATION OF A ROAD DISTRICT RELATING TO NORTHWOODS
ROAD DISTRICT NO. 1

**NAME OF APPLICANT
OR ORGANIZATION:** Northwoods Avery Ranch LLC

LOCATION: Lakeline Boulevard and Staked Plain Drive, South Brushy
Creek

PROJECT FILING DATE: FEBRUARY 25, 2011

**WPDR/ENVIRONMENTAL
STAFF:** Jean Drew, 974-2272
Jean.drew@ci.austin.tx.us

**WPDR/
CASE MANAGER:** David Wahlgren, 974-6455
david.wahlgren@ci.austin.tx.us

WATERSHED: Lakeline TOD

REQUEST: To recommend the approval, to the City Manager and
City Council, for the Creation of a Road District relating
to the Northwoods Road District No. in Williamson
County, Texas.

STAFF RECOMMENDATION: To recommend the approval to the City Manager and City
Council



INTEROFFICE MEMORANDUM

TO: Members of the Environmental Board

FROM: Jean Drew, Environmental Policy Program Manager, Watershed Protection Department

DATE: April 21, 2011

SUBJECT: To recommend the approval, to the City Manager and City Council, for the Creation of a Road District relating to the NorthWoods Road District No 1 in Avery Ranch Subdivision, Williamson County, Texas

The applicant is requesting the approval of the Northwoods Road District No 1. The applicant has submitted a request (see attached letter dated February 25, 2011) for a road district to be located in northwest Austin north of Hwy 620 and east of Hwy 183) on a portion of the Avery Ranch Subdivision known as the Leander Rehabilitation Site PUD. This district is being created through Chapter 257 of the Texas Transportation Code as a County Road District. The land owners are asking for the City to review the creation of this district as we would do for a Road Utility District described in Article 8 of LDC Chapter 25-6, which requires that the Urban Transportation Commission, the Planning Commission and the Environmental Board make a recommendation to the City Manager and City Council regarding this issue. Through creation of a road utility district, the applicant may be able to be reimbursed by the District for the construction of the roadway in the future after the construction is complete.

The roadway itself (Staked Plains Drive) is a needed collector street which will provide additional north/south access. At this time only Parmer Land and Hwy 183 move traffic north/south in this area. The road will help allow access from Avery Ranch Blvd. to Hwy 620, and will allow much faster access to the Capital Metro Lakeline Station site than can be achieved without the roadway.

The final plats for portions of the Staked Plains Drive will be on the Planning Commission agenda for approval on April 26, 2011. This roadway is subject to current Land Development Code (LDC) requirements, and has provided water quality and detention in conjunction with Avery Ranch Subdivision. This roadway is related to the Avery Ranch Station project which was recently heard by the Environmental Board for a cut/fill variance to convey drainage to the

wetpond. Staff recommends that the Environmental Board recommend the approval, to the City Manager and City Council, for the creation of a Road District known as Northwoods Road District No 1 in Williamson County for the following reasons”

- The roadway will benefit the City of Austin, and is a needed north/south arterial providing traffic relief to the area, as well as facilitating the use of mass transit by providing better access to the Capital Metro Rail Lakeline Station and providing improved access to Emergency Services.
- Approval of the District will not have a negative impact on the health, safety or welfare of the community.

If you have any further question or require additional information, please contact me at 974-2272, jean.drew@ci.austin.tx.us or David Wahlgren ,PDRD, at 974-6455, david.wahlgren@ci.austin.tx.us

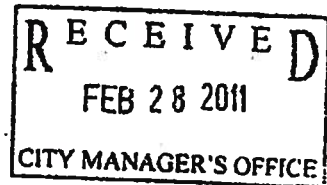




JACKSON WALKER L.L.P.
ATTORNEYS & COUNSELORS

Timothy C. Taylor
Partner
512.236.2390
ttaylor@jw.com

February 25, 2011



Mr. Marc Ott
City Manager
City of Austin
P.O. Box 1088
Austin, Texas 78767

RE: Northwoods Road District No. 1

Dear Mr. Ott:

This law firm represents Northwoods Avery Ranch, LLC ("Owner"). Owner is the owner of approximately 181.954 acres of land, more or less, in the City of Austin, Travis County, Texas. Owner intends to create a road district (the "District") under the terms and provisions of Article III, Section 52 of the Constitution of Texas and Chapter 257 of the Texas Transportation Code and Subchapter B of Chapter 1471 of the Texas Government Code.

This letter serves as formal notice, under Section 25-6-622 of the City of Austin Code, of Owner's intent to file with the City of Austin a Petition for Consent to the Creation of a Road District thirty (30) days from the date hereof.

The District is a real estate development project known as Northwoods at Avery Ranch. There are active cases (under the name "Avery Station") being processed with the City of Austin. The information concerning those subdivisions is on the enclosed document entitled "Northwoods - Avery Station". Additional information and a conceptual plan showing the benefited roads is also enclosed.

We look forward to working with you and City staff on this matter.

Please call me if you have any questions or comments.

Very truly yours,

Timothy C. Taylor

138200.00001

SENT BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
AND COPY BY E-MAIL

100 Congress Avenue, Suite 1100 • Austin, Texas 78701 • (512) 236-2000 • fax (512) 236-2002

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Mr. Marc Ott
City of Austin
February 25, 2011
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c: Gregory Miller, Esq.
City of Austin Law Department

Northwoods Avery Ranch, LLC
Attn: Mr. Glenn Aaronson

Mr. Todd Janssen
Mr. Gary L. Newman

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is by and among the undersigned Northwoods Avery Ranch LLC ("Northwoods" and "Developer") and Williamson County, a political subdivision of the State of Texas (the "County"), on this 22nd day of March, 2011.

RECITALS:

WHEREAS, Northwoods is the developer of the Property attached as Exhibit A planned to be developed as a master-planned community or other development (the "Development"); and

WHEREAS, the Developer and the County are interested in cooperating in the widening and expansion of Lakeline Boulevard and the construction of Staked Plains Blvd. together with all related improvements and appurtenances thereto, as more particularly described in Section 2.1 below (collectively, the "Road Improvements"); and

WHEREAS, Developer, as part of this Agreement, has asked the Commissioner's Court of Williamson County to consider the creation of the Northwoods Road District No. 1 (the "District") under and in accordance with Chapter 257 of the Texas Transportation Code and Chapter 1471, Texas Government Code, for purposes of reimbursing Developer's costs associated with the Road Improvements; and

WHEREAS, as consideration for the creation of the District, Developer agrees to construct the Road Improvements in accordance with the terms and conditions set forth in this Agreement, as described below;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the County covenant and agree as follows:

1. Dedication of Land / Acquisition of Right-of-Way.

1.1. *Road Design Standards.* All Road Improvements that are subject to reimbursement under this Agreement shall, to the extent governed by the City of Austin's ordinances and regulations in effect at the time of submission for approval, be constructed in accordance with such ordinances and regulations. The County agrees that for purposes of Section 257.003 of the Texas Transportation Code, any improvements constructed in accordance with the City of Austin ordinances and regulations shall be deemed to be constructed in accordance with the road standards and rules of the County.

1.2. *Water Quality / Detention Ponds / Drainage Easements.* Developer agrees to dedicate (by plat or by separate instrument) all easements for the construction and maintenance of water quality / detention ponds and drainage easements necessary to serve the road improvements constructed under this Agreement.

1.3 *Dedication of Right-of-Way.* Developer shall dedicate by plat all right-of-way needed for the Road Improvements.

1.4 *Dedication of Open Space Lots or Easements.* To the extent any of the landscaping or other Road Improvements are located outside of the dedicated right-of-way area, Developer shall dedicate such improvements for public use and benefit by plat dedication of open space lots or easements including such improvements.

2. Road District.

2.1. The Road Improvements. The Road Improvements, as depicted in Exhibit B, attached hereto, shall consist of a four (4) lane divided arterial for Staked Plains Blvd. from the Avery Ranch Subdivision to Lakeline Blvd., and (b) the widening and extension of Lakeline Blvd. to a four (4) lane arterial from Lake Creek east to the Capital metro right-of-way, including the right-of-way for such roadway improvements, together with all irrigation, lighting, landscaping, monumentation, fencing, walls, screening, drainage, water quality ponds, detention ponds, and all other facilities, equipment, improvements and appurtenances related to the proposed roadway improvements (collectively, the "Road Improvements").

2.2 Creation of District. To the extent authorized by law, the County agrees to take all actions necessary for the creation of the District in accordance with the terms of this Agreement and the provisions of Chapter 257, Texas Transportation Code and Chapter 1471, Texas Government Code. The County agrees to provide to Developer a copy of all documents relating to the proposed creation of the District (and related election proceedings) and a reasonable opportunity to comment thereon prior to consideration. If the District has not been created and secured voter authorization to issue bonds for purposes of financing the Road Improvements by June 1, 2012, then the Developer may elect (but shall not be obligated) to terminate this Agreement by providing not less than 30 days prior written notice of termination to the County. Further, if the District has not been created by such date and authorized to issue bonds, the Developer shall also be relieved of its obligation to construct that portion of the Road Improvements associated with the widening and expansion of Lakeline Boulevard. In the event of termination of this Agreement, the parties shall be without further obligation to each other hereunder for all purposes (except for the costs and expenses of the County and the District related to holding the election).

2.3. Purpose. The real property that is to be included in the District is more particularly described by metes and bounds and by sketch in Exhibit A attached hereto (the "Property"). The County, by approval and execution of this Agreement, agrees that the Road Improvements benefit the Property. The District shall be responsible for the levying of ad valorem taxes on all taxable property within the Property in accordance with Chapter 257 of the Texas Transportation Code, as amended, with the limitation that the purpose of the District is to issue bonds to reimburse Developer (or the County in accordance with Section 5.3) for all costs and expenses associated with the Road Improvements, including without limitation, all engineering, legal, financing, design, construction, permitting, and other costs and expenses incident to design and construction of the Road Improvements (the

"Reimbursable Costs"). The County agrees that the Reimbursable Costs shall include Developer's costs incurred in connection with creation of the Road District, if any, and Developer's costs of acquisition (at Developer's reasonable purchase price) of the right-of-way, easements and other real property interests in which the Road Improvements shall be located, and all other costs and expenses that may be payable by a road district under Chapter 257 of the Texas Transportation Code and Chapter 1471, Texas Government Code. In the event that any water quality ponds or other facilities and improvements that are constructed as part of the Road Improvements are oversized to serve development of other lands, then the Reimbursable Costs shall include all costs and expenses incurred by Developer related to such improvements save and except the incremental costs associated with oversizing the improvements as necessary for serving other lands and purposes.

2.4. Time and Amount of Reimbursement. Williamson County shall have no obligation to issue debt or use other County funds to finance the construction of the Road Improvements. The County agrees to use reasonable efforts to create the District and to cause the District to sell its bonds for reimbursing the Reimbursable Costs, but cannot guarantee the sale thereof, and the District will not be obligated to offer the bonds for sale in contravention of any laws of the State of Texas. Within forty-five (45) days after the District's receipt of the proceeds of the bonds to finance the Road Improvements, the District shall reimburse Developer for the Reimbursable Costs as confirmed by the reimbursement audit to be prepared by the accountant or firm of accountants selected by the District. It is specifically understood and agreed by the parties that the issuance of bonds to acquire the improvements will most likely be accomplished through a series of bond sales over time until such time as all bond authorization has been issued or all Reimbursable Costs have been paid to Developer (whichever occurs first). The District's financial advisor shall advise the District as to the amount of bonds that can be prudently sold from time to time. No bonds shall be issued, when taken together with any other County debt issued pursuant to Article III, Section 52 of the Texas Constitution, in an amount exceeding 25% of the total assessed value of real property in the District.

2.5. Conditions to Reimbursement. The District's obligation to issue the bonds and to reimburse Developer for funds advanced for the Road Improvements shall be subject to the following:

- a. No bonds will be issued until the District receives the recommendation of its financial advisor that the sale and amount of each particular bond issue by the District is feasible and prudent based upon a number of considerations including the overlapping tax rate, tax collections history, percentage of collections, and assessed valuation to debt;
- b. Developer agrees not to request the issuance of indebtedness by the District until: such time as the assessed value of the land in the District is such that the proposed debt amount (when aggregated with all other existing and outstanding [but not retired] debt of the District) is twelve and one-half percent (12.5%) or less of the assessed value of land and improvements in the District;

- c. All bonds issued are payable from an unlimited ad valorem tax on all property in the District; however, prior to the issuance of any series of bonds, the assessed value of all taxable property within the Property, as shown by the latest appraisal roll issued by the Williamson County Appraisal District, is such that the debt service on the District's outstanding bonds, and the bonds then being issued, can be paid with a projected tax rate not greater than \$0.29 per \$100 of assessed valuation;
- d. Construction of the Road Improvements will be (i) carried out through the award of contracts in substantial conformity with the bid procedures applicable to the County, and (ii) performed in accordance with the road standards and rules of the County (which include the standards of the City of Austin, if applicable);
- e. The Road Improvements associated with Staked Plains Boulevard will be open for public use or accepted by official action of the City of Austin and/or County (as applicable), and the Developer has commenced construction of the Lakeline Boulevard expansion, prior to any reimbursement by the District;
- f. The construction contract for the Road Improvements will be approved by the Commissioner's Court of the County, which approval shall not be unreasonably withheld or delayed;
- g. Receipt of a bona fide bid or commitment to purchase the bonds;
- h. Approval of the bonds by the Attorney General of the State of Texas and registration of the bonds by the Comptroller of Public Accounts of the State of Texas;
- i. The District shall not be obligated to consider the issuance of bonds in an amount less than \$1,000,000.00 except for the issuance of the last series of bonds by the District; and
- j. Developer is current on all taxes, fees and obligations to the District and no additional District bonds will be issued if any outstanding bonds are in default or reserve funds have been drawn down and not replenished.
- k. ANY AND ALL DEBT ISSUED BY THE DISTRICT SHALL BE SOLELY A DEBT OF THE DISTRICT AND SHALL NOT BE AN OBLIGATION OF WILLIAMSON COUNTY.

The bonds shall be offered on terms and conditions generally accepted in the bond market for similar types of obligations and at a net effective interest rate, taking into consideration any discount or premium, not to exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "25 Revenue Bond Index" during the one month preceding the bond sale.

Subject to the terms and limitations of this Agreement, the Developer shall request the District to issue bonds from time to time; provided, however, the District shall not be obligated to sell or issue any amount of bonds in excess of the amount then recommended by the District's financial advisor. Bond proceeds will fund a reserve fund in an amount deemed necessary by the District's financial advisor for sale of the bonds unless determined unnecessary by the financial advisor.

3. **Design and Construction of Project.** Developer shall design and construct the Road Improvements, including the performance of all engineering, Phase 1 environmental studies, geotechnical studies, surveying or environmental reports; mitigation, and all other design and construction responsibilities (the "Design Expenses"). The County acknowledges that the Developer has previously incurred some Design Expenses, and agrees that all Design Expenses, regardless of the date incurred, shall be considered Reimbursable Costs. Developer agrees to consult with the County, and the City of Austin, if necessary, regarding the design and construction of the Road Improvements and the awarding of contracts for such construction.

4. **Cost of Improvements.** Developer shall promptly pay the costs of the Road Improvements as the same become due, including, without limitation, all "soft" and "hard" costs of the design, engineering, permitting, and materials, labor, construction and inspection arising in connection with the Road Improvements; all payments arising under any contracts entered into for the construction of the Road Improvements; all costs incurred in connection with obtaining governmental approvals, certificates, permits, required as a part of the construction of the Road Improvements. All such costs and expenses shall be considered Reimbursable Costs to the extent authorized by Texas law and federal tax law. Neither the District nor Williamson County shall be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with in connection with the construction of the Road Improvements, but shall only be obligated to reimburse Developer through the issuance of bonds by the District in the manner and to the extent provided in this Agreement.

5. **Timing of Construction of Project.**

5.1 **Staked Plains Blvd.** Developer shall substantially complete construction of Staked Plains Blvd. and associated improvements within two (2) years after the District has been established and been authorized by voter approval to issue bonds for payment of the Reimbursable Costs. The Parties agree that the foregoing two (2) year period shall be tolled in the event of, and for the duration of, any delays caused by force majeure.

5.2 **Lakeline Blvd.** The Developer shall promptly commence construction of the Lakeline Blvd. widening after a Certificate of Occupancy has been issued by the City of Austin for the 200th home constructed within the Northwoods at Avery Ranch Subdivision, or by December 31, 2015, whichever occurs earliest.

5.3 **Construction by County.** If the Developer fails to substantially complete construction (with respect to Staked Plains Blvd.) or commence construction (with respect to Lakeline Blvd.) within the time frames set forth in Sections 5.1 or 5.2 above, respectively, then the County may elect to complete some or all of the unfinished Road Improvements. If the County elects to do so, the County shall be entitled to reimbursement from the District for all costs of construction and other costs incurred by the County related to the completion of the Road Improvements. Under

such circumstances, the Developer shall not be entitled to any reimbursement for any Reimbursable Costs it incurred until after the County receives reimbursement of all of its costs and expenses. If the County elects to complete construction of the Road Improvements, the Developer shall not be responsible for payment or reimbursement to the County for any costs or expenses incurred by the County in connection with the County's completion of construction of the Road Improvements.

6. **Ownership and Maintenance of Road Improvements.** All Road Improvements located within the public right-of-way shall be dedicated by plat. Any Road Improvements located outside of the dedicated right-of-way shall be dedicated by plat or by separate instrument. The Developer agrees that the County shall not be responsible for maintenance of the Road Improvements. Except as otherwise requested by the City of Austin or the County, all landscaping, fencing, walls, ponds and other Road Improvements (whether located within or outside the right-of-way) shall be maintained by the homeowner's association (the "HOA") created by the Developer provided a license agreement is granted to the HOA for such purposes. The District's bonds shall not be used for maintenance purposes.

7. **Indemnity.** Developer shall indemnify and hold Williamson County, the District, and their directors and officers harmless from and against all losses, costs, damages, expenses and liabilities (herein collectively referred to as "Losses") of whatsoever nature, including, but not limited to, attorney's fees, costs of litigation, court costs, amounts paid in settlement and amounts paid to discharge judgments relating to any claim, lawsuit, cause of action or other legal action or proceeding brought against Williamson County or the District or to which Williamson County, or the District may be party, even if groundless, false or fraudulent, directly, or indirectly resulting from, arising out of or relating to the construction of the Road Improvements excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the District or County. In the event of any actions brought against Williamson County or the District in which indemnification by Developer is applicable, Williamson County or the District shall promptly give written notice to Developer, and Developer shall assume the investigation and defense of such action, including the employment of counsel and the payment of all expenses. Williamson County or the District shall have the right, at its expense, to employ separate counsel and to participate in the investigation and defense of any such action. Developer shall not be liable for the settlement of any such action made by Williamson County or the District without the consent of Developer; provided, however, that in the event of any settlement entered into with the consent of Developer of any final judgment for a plaintiff in any such action, Developer shall indemnify and hold Williamson County or the District harmless from and against any losses incurred by reason of such settlement or judgment. The expiration of the terms of this Agreement shall not relieve Developer from any liability initiated hereunder arising prior to the expiration of this Agreement. Provided, however, this indemnification shall expire and terminate two (2) years after the later to occur of (i) the Road Improvements have been accepted for maintenance by the applicable governmental authority, or (ii) Developer shall have received final reimbursement from the District for the costs of Road Improvements.

8. **Completion of Improvements.** Upon completion of construction, the Developer will provide the District with final, record drawings of the Road Improvements approved by the project engineer. Upon completion of construction, the Developer will also provide the District with applicable acceptance letters and a certificate of completion from the project engineer, certifying that the construction of the Road Improvements has been completed in accordance with the plans and specifications and that the record drawings have been furnished.

9. **Continuing Securities Disclosures.** Developer agrees to provide periodic information and notices of material events regarding Developer's development within the District in accordance with the Securities and Exchange Commission Rule 15c2-12.

10. **Notice of District.** Developer covenants to provide notice to anyone that purchases or contracts to purchase land within the District of the District's existence and ability to issue bonds in accordance with Section 257.005 of the Texas Transportation Code (similar to the notice given regarding the existence of municipal utility districts).

11. **Violation of this Agreement.** In the event that Developer, or his respective successors or assigns fail to abide by the terms of this Agreement, a copy of this Agreement and evidence of violation of this Agreement shall be sufficient evidence and confession of judgment at an injunction hearing. Additionally, if Developer, or its respective successors or assigns fail to substantially abide by the terms of this Agreement, the County reserves the option to terminate this Agreement, after providing to Developer, or its successors or assigns, thirty (30) days prior written notice of the above-described failure and an opportunity to cure such failure within such 30 day period with respect to any failure that may be cured within a 30 day period, or with respect to matters that may not be cured within said 30 day period, Developer fails to pursue curative action with reasonable diligence to completion .

12. **Consent.** The County consents to the creation of the District.

13. **Notice.** Except as otherwise provided to the contrary herein, any notice, request, demand, statement or consent give or made hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested and shall be deemed given when postmarked and addressed as follows:

If to the County: Williamson County
ATTN: County Judge
710 Main Street, Suite 210
Georgetown, Texas 78626

If to Developer: Northwoods Avery Ranch LLC
Attn: Gary Newman
7811 Ranch Road 2338
Georgetown, Texas 78633

With copy to: Dubois Bryant & Campbell, L.L.P.
Attn: Robert F. Dubois III
700 Lavaca, Suite 1300 (78701)
P.O. Box 909 (78768)
Austin, Texas (See above zip codes)

Any party may designate a change of address by notice to the other parties, given at least fifteen (15) days before such change of address is to become effective. The foregoing notwithstanding any notice hereunder shall be effective when actually received by the party to whom such notice is being sent.

14. Miscellaneous.

(a) Texas Law to Apply. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THE CONTRACT ARE PERFORMABLE IN WILLIAMSON COUNTY, TEXAS.

(b) Assignment; Parties Bound. This Agreement may be assigned by Developer only (i) in accordance with Section 15 below, or (ii) with the prior written approval of the County, which approval will not be unreasonably withheld, conditioned, or delayed. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, legal representatives, successors and assigns.

(c) Authority. The County represents and warrants to Developer that it is duly authorized and empowered to enter into this Agreement. Developer represents and warrants to the County that it has the requisite authority to enter into this Agreement. Each signatory to this Agreement represents and warrants that he or she has the authority to execute this Agreement on behalf of the party for whom such person is signing.

(d) Force Majeure. In the event either Party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving written notice and full particulars of such force majeure to the other Party as soon as practicable after occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent they are affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure", as used herein, shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances; acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people; governmental, regulatory, judicial, or administrative restraint or order; explosions, breakage, or damage to machinery, equipment, pipelines, or canals; failure, interruptions, or curtailment of water or energy supply; action or inaction concerning governmental or regulatory authorizations; and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

(e) No Partnership. Developer, City and County are not partners or joint venturers. In no event will any of the parties hereto be liable or responsible for any contractual, tortuous, or other liability, obligation, or debt arising out of the actions of any other party, whether a party to this Agreement or otherwise.

(f) Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, or unenforceability shall not affect any other provision in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

(g) Gender. Words of any gender used in this Agreement shall be held to include the plural, and vice versa, unless the context requires otherwise.

(h) Multiple Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

15. Lender Protection Provisions.

15.1 Developer's Right to Encumber. Developer may, from time to time and at any time, without District's consent or joinder, encumber its interest in this Agreement and/or its right to receive payments hereunder with one or more collateral assignments, deeds of trust, security agreements, or other lien instruments to secure any borrowings or obligations of the Developer. Any such collateral assignments, deeds of trust, security agreements, or other lien instruments, and the indebtedness secured thereby, provided that County has been given notice thereof as set forth in Section 13, are herein referred to as a "Permitted Pledge", and the holder or other assignee or beneficiary thereof is herein referred to as a "Permitted Lender". This right to encumber without the District's consent or joinder includes the right of the Permitted Lender to foreclose its Permitted Pledge or otherwise receive an assignment of the Developer's interest in this Agreement and/or its right to receive payments hereunder in lieu of such foreclosure.

15.2 Notice and Cure, Etc.. If Developer encumbers its interest in this Agreement and/or its right to receive payments hereunder as above provided, then Developer shall notify the County thereof, providing with such notice the name and mailing address of the Permitted Lender in question. County shall, upon request, acknowledge receipt of such notice, and for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) County shall give to the Permitted Lender a duplicate copy of any and all notices of default, and no such notice shall be effective until such duplicate copy is actually received by such Permitted Lender, in the manner provided in Section 13.

(b) There shall be no cancellation, surrender, or modification of this Agreement by joint action of County and Developer without the prior written consent of the Permitted Lender.

(c) If Developer should default hereunder, then the County specifically agrees that:

(1) County shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of this Agreement, until a notice specifying the event giving rise to such default has been received by the Permitted Lender, in the manner provided in Section 13, and if the Permitted Lender proceeds to cure the default within a period of 30 days after receipt of such notice or, as to events of default which by their very nature cannot be cured within such time period, the Permitted Lender, to the extent it is able to do so, commences curing such default within such time period and thereafter diligently pursues such cure to completion, then any payments made and all things done by the Permitted Lender to effect such cure shall be as fully effective to prevent the exercise of any rights, recourses, or remedies by County as if done by Developer; and

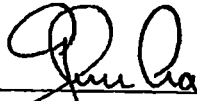
(2) if the default is a non monetary default that a Permitted Lender cannot reasonably cure without being in possession of the Property, then for so long as the Permitted Lender is diligently and with continuity attempting to secure possession of the Property (whether by foreclosure or other procedures), provided the Permitted Lender cures any monetary defaults as well as any other defaults that are reasonably susceptible of then being cured by the Permitted Lender, then the County shall allow the Permitted Lender such time as may be reasonably necessary under the circumstances to obtain possession of the Property in order to cure such default, and during such time the County shall not enforce or seek to enforce any of its rights, remedies or recourses hereunder.

(d) No Permitted Lender shall be or become liable to the County as an assignee of this Agreement and/or its right to receive payments hereunder until such time as such Permitted Lender, by foreclosure or other procedures, shall acquire the rights and interests of the Developer under this Agreement and/or its right to receive payments hereunder, and upon such Permitted Lender's assigning same to another party, such Permitted Lender shall have no further such liability. Any Permitted Lender acquiring Developer's rights and interests in this Agreement and/or its right to receive payments hereunder shall be free to assign same to any person, partnership, joint venture, or other entity controlling, controlled by or under common control with such Permitted Lender without regard to the limitations set forth in Section 14(b), provided that the provisions of this Section 15.2(d) allowing such unrestricted assignment are not used by such Permitted Lender in bad faith to circumvent the requirements of Section 14(b).

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EXECUTED EFFECTIVE March 22, 2011.

Developer:

NORTHWOODS AVERY RANCH LLC

By:  _____
President

County:

WILLIAMSON COUNTY, TEXAS

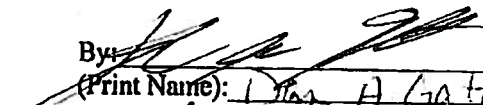
By:  _____
(Print Name): Don A Gattis
(Title): County Judge

Exhibit "A"
Description of Real Property Within Road District

181.954 ACRES .
AVERY STATION

FN. NO. 10-251(KWA)
DECEMBER 21, 2010
BPI JOB NO. 1713-05.91

DESCRIPTION

OF A 181.954 ACRE TRACT OF LAND OUT OF THE RACHEL SAUL SURVEY, ABSTRACT NO. 551, SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 177.63 ACRE TRACT CONVEYED TO NORTHWOODS AVERY RANCH, LLC, BY DEED OF RECORD IN DOCUMENT NO. 2009049201 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND A PORTION OF THAT CERTAIN REMAINDER OF TRACT 1 - 104.79 ACRES OF LAND CONVEYED TO FLEUR LAND, LTD., BY DEED OF RECORD IN DOCUMENT NO. 9815649 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 181.954 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod with cap found in the northerly right-of-way line of Lakeline Boulevard (R.O.W. varies), being in the westerly line of that certain tract of land conveyed to Capital Metropolitan Transportation Authority (100' Railroad R.O.W.), by Deed of record in Document No. 2000020773 of said Official Public Records, for the southeasterly corner of said 177.63 acre tract and hereof;

THENCE, along said northerly right-of-way line of Lakeline Boulevard, for the southerly line of said 177.63 acre tract and hereof, the following seven (7) courses and distances:

- 1) S71°07'49"W, a distance of 620.38 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;
- 2) Along said curve, having a radius of 25.00 feet, a central angle of 87°38'53", an arc length of 38.24 feet, and a chord of which bears N64°54'00"W, a distance of 34.62 feet to a 1/2 inch iron rod found at the end of said curve;
- 3) N21°15'30"W, a distance of 28.27 feet to a 1/2 inch iron rod found for an angle point;
- 4) S68°59'00"W, a distance of 105.00 feet to a 1/2 inch iron rod found for an angle point;
- 5) S20°57'18"E, a distance of 29.94 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;
- 6) Along said curve, having a radius of 25.07 feet, a central angle of 91°43'59", an arc length of 40.15 feet, and a chord of which bears S24°54'41"W, a distance of 35.99 feet to a 1/2 inch iron rod found at the end of said curve;

- 7) S71°07'27"W, a distance of 662.76 feet to a 1/2 inch iron rod found at the southwesterly corner of said 177.63 acre tract, being the southeasterly corner of said Remainder of Tract 1 - 104.79 acres, for the southwesterly corner hereof;

THENCE, leaving said northerly right-of-way line of Lakeline Boulevard, in part along the westerly line of said 177.63 acre tract and in part over and across said Remainder of Tract 1 - 104.79 acres, with the westerly lines hereof, the following nine (9) courses and distances:

- 1) N18°33'57"W, a distance of 266.61 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N18°57'45"W, a distance of 847.69 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S72°06'17"W, a distance of 151.64 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S31°14'40"W, a distance of 124.24 feet to a 1/2 inch iron rod with cap set for an angle point;
- 5) S60°34'23"W, a distance of 113.65 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) S62°44'03"W, a distance of 133.31 feet to a 1/2 inch iron rod with cap set for an angle point;
- 7) S64°37'57"W, a distance of 79.68 feet to a 1/2 inch iron rod with cap set for an angle point;
- 8) S64°06'24"W, a distance of 172.78 feet to a 1/2 inch iron rod with cap set for an angle point;
- 9) S69°14'22"W, a distance of 43.54 feet to a 1/2 inch iron rod with cap set in the easterly line of that certain tract of land conveyed to the State of Texas, by Deed of record in Volume 1723, Page 855 of said Official Records, being the westerly line of said Remainder of Tract 1 - 104.79 acres, for an angle point hereof, from which a 1/2 inch iron rod found in the northerly right-of-way line of Lakeline Boulevard (R.O.W. width varies), being the southeasterly corner of Lot 1, Block "B", Parkline Section II, a subdivision of record in Cabinet "K", Slides 11-14 of the Plat Records of Williamson County, Texas, also being the southwesterly corner of said Remainder of Tract 1 - 104.79 acres bears S20°45'38"E, a distance of 983.84 feet;

THENCE, N20°45'38"W, along the easterly line of said State of Texas tract, for the westerly line of said Remainder of Tract 1 - 104.79 acres, said 177.63 acre tract and hereof, a distance of 2204.87 feet to a 1/2 inch iron rod found in the southerly line of that certain Remainder of Tract 2 - 92.657 acres of land conveyed to Continental Homes of Texas, L.P., by Deed of record in Document No. 2004043865 of said Official Public Records, for the northwesterly corner of said 177.63 acre tract and hereof;

THENCE, N69°01'07"E, along the southerly line of said 92.657 acre tract, the southerly line of Avery Ranch Far West, Phase Two, Section Four, a subdivision of record in Cabinet DD, Slides 265-267 of the Plat Records of Williamson County, Texas, the southerly line of Avery Ranch Far West, Phase Two, Section Three, a subdivision of record in Cabinet DD, Slides 87-90 of said Plat Records, and the southerly terminus of Staked Plains Drive (90' R.O.W.), a distance of 2790.81 feet to a 1/2 inch iron rod at the northwesterly corner of that certain tract of land conveyed to LCRA Transmissions Services Corporation, by Deed of record in Document No. 2003022895 of said official Public Records, for the northeasterly corner of said 177.63 acre tract and hereof;

THENCE, leaving the southerly line of Avery Ranch Far West, Phase Two, Section Three, along the westerly and southerly lines of said LCRA Transmissions Services Corporation tract, for a portion of the easterly line of said 177.63 acre tract and hereof, the following three (3) courses and distances:

- 1) S20°59'16"E, a distance of 115.13 feet to a 1/2 inch iron rod found for an angle point;
- 2) S57°10'21"E, a distance of 575.73 feet to a 1/2 inch iron rod found for an angle point;
- 3) S88°56'19"E, a distance of 129.95 feet to a 1/2 inch iron rod found in the westerly line of said Capital Metropolitan Transportation Authority (100' Railroad R.O.W.) tract, being the beginning of a non-tangent curve to the right, for an angle point hereof;

THENCE, leaving said LCRA Transmissions Services Corporation tract, along said Capital Metropolitan Transportation Authority (100' Railroad R.O.W.) tract, for a portion of the easterly line of said 177.63 acre tract and hereof, the following three (3) courses and distances:

- 1) Along said curve, having a radius of 4575.32 feet, a central angle of 05°33'25", an arc length of 443.75 feet, and a chord of which bears S03°50'25"W, a distance of 443.58 feet to, a 1/2 inch iron rod found at the end of said curve;

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- 2) S04°33'22"W, a distance of 1523.99 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the left;
- 3) Along said curve, having a radius of 2020.25 feet, a central angle of 24°49'56", an arc length of 875.58 feet and a chord of which bears S 05°35'04" E a distance of 868.74 feet to the **POINT OF BEGINNING**, containing an area of 181.954 acres (7,925,936 square feet of land, more or less, within these metes and bounds.

BEARING BASIS: IS REFERENCED TO THE TEXAS COORDINATE SYSTEM, NAD 83(93) CENTRAL ZONE, UTILIZING THE LCRA GPS SURVEY CONTROL NETWORK.

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
221 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701

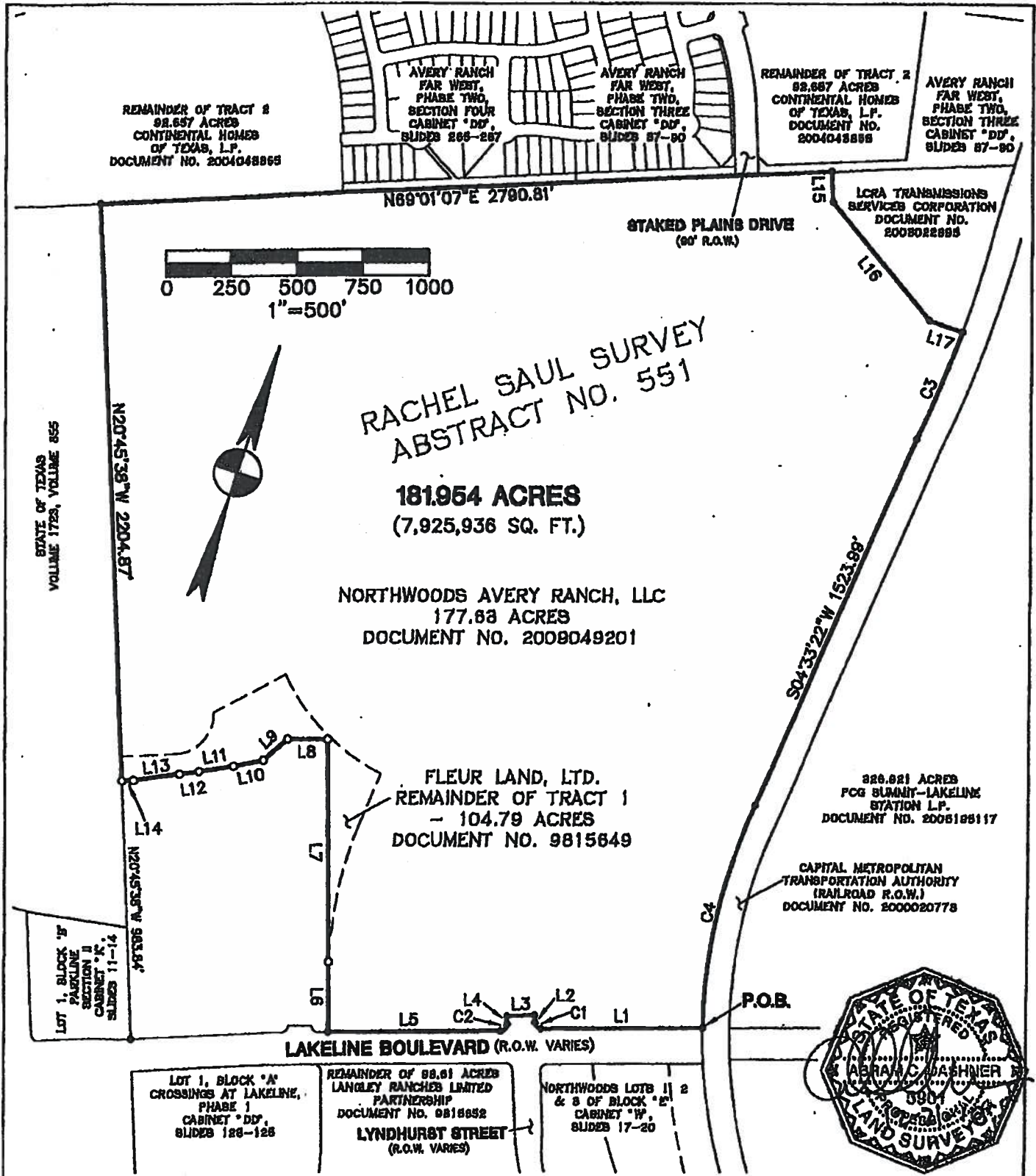


ABRAM C. DASHNER
R.P.L.S. NO. 5901
STATE OF TEXAS

DATE

12-21-10





Bury+Partners
ENGINEERING SOLUTIONS
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Austin, Texas 78701
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SKETCH TO ACCOMPANY DESCRIPTION
OF A 181.954 ACRE TRACT OF LAND OUT OF THE RACHEL SAUL SURVEY, ABSTRACT NO. 551, SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 177.63 ACRE TRACT CONVEYED TO NORTHWOODS AVERY RANCH, L.L.C. BY DEED OF RECORD IN DOCUMENT NO. 2009049201 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND A PORTION OF THAT CERTAIN REMAINDER OF TRACT 1 - 104.79 ACRES OF LAND CONVEYED TO FLEUR LAND, LTD., BY DEED OF RECORD IN DOCUMENT NO. 9815649 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS.

NORTHWOODS AVERY RANCH, LLC

DATE: 12/21/10

FILE: H:\1713\05\171305EX1.DWG

FN No.: 10-251(KWA)

DRAWN BY: KWA

PROJ. No: 1713-05.91

LINE TABLE

LINE	BEARING	LENGTH
L1	S71°07'49"W	820.38
L2	N21°15'30"W	28.27
L3	S88°59'00"W	105.00
L4	S20°57'18"E	29.94
L5	S71°07'27"W	862.78
L6	N18°33'57"W	266.81
L7	N18°57'45"W	847.69
L8	S72°06'17"W	151.64
L9	S31°14'40"W	124.24
L10	S60°34'23"W	113.65
L11	S82°44'03"W	133.31
L12	S64°37'57"W	79.68
L13	S64°06'24"W	172.78
L14	S69°14'22"W	43.54
L15	S20°59'16"E	115.13
L16	S57°10'21"E	575.73
L17	S88°56'19"E	129.95

CURVE TABLE

No.	Delta	Radius	Arc Length	Chord Length	Chord Bearing
C1	87°38'53"	25.00	38.24	34.82	N64°54'00"W
C2	91°43'58"	25.07	40.15	35.99	S24°54'41"W
C3	5°33'25"	4575.32	443.75	443.58	S03°50'25"W
C4	24°49'56"	2020.25	875.58	868.74	S05°35'04"E



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ENGINEERING SOLUTIONS
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Tel. (512)328-0011 Fax (512)328-0325
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SKETCH TO ACCOMPANY DESCRIPTION

OF A 181.854 ACRE TRACT OF LAND OUT OF THE RACHEL SAUL SURVEY, ABSTRACT NO. 551, SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 177.63 ACRE TRACT CONVEYED TO NORTHWOODS AVERY RANCH, LLC, BY DEED OF RECORD IN DOCUMENT NO. 2009049201 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND A PORTION OF THAT CERTAIN REMAINDER OF TRACT 1 - 104.79 ACRES OF LAND CONVEYED TO FLEUR LAND, LTD., BY DEED OF RECORD IN DOCUMENT NO. 8815649 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS.

**NORTHWOODS
AVERY RANCH,
LLC**

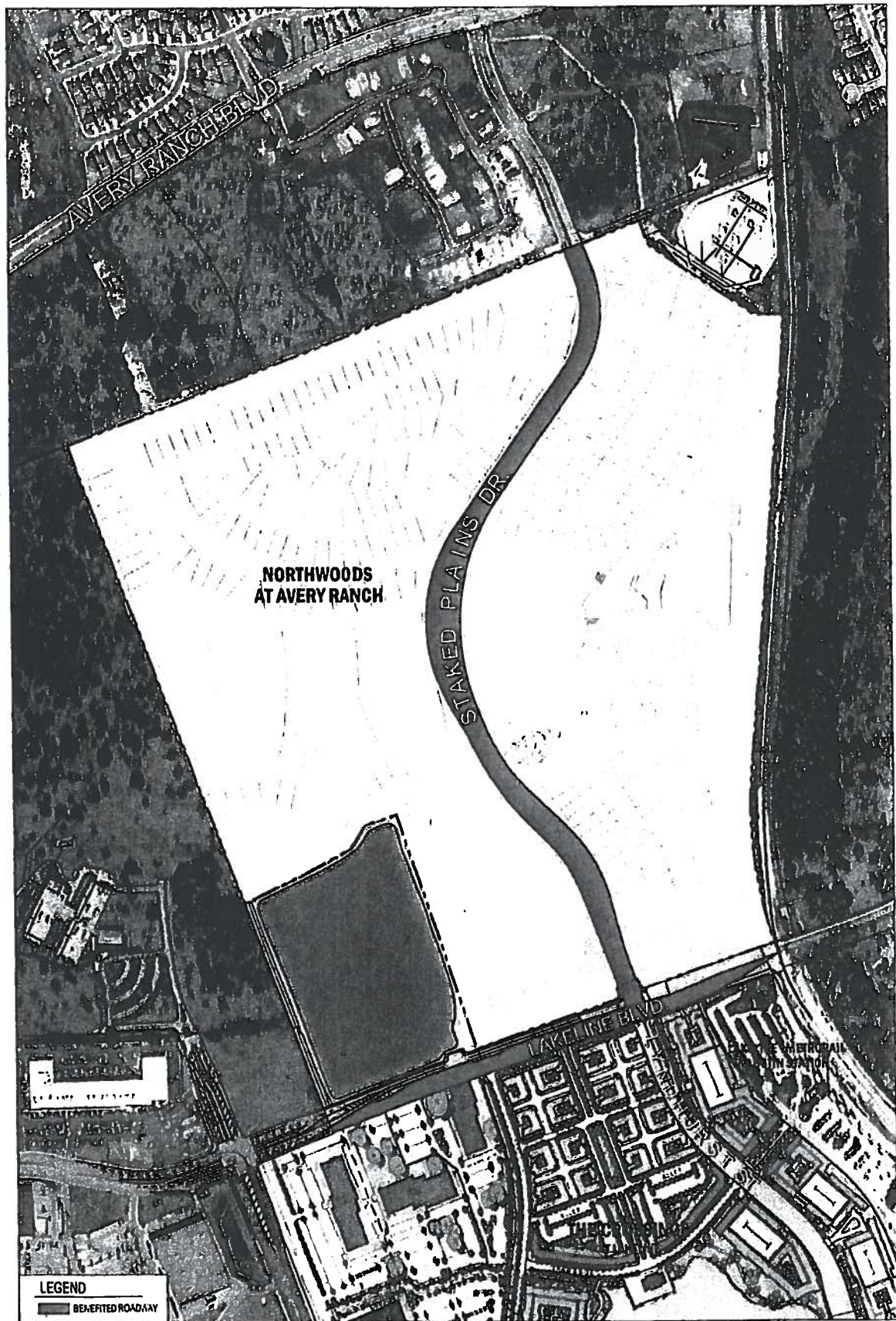
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PROJ. No: 1713-05.91



SEC Planning, LLC

Land Planning • Landscape Architecture • Community Branding

AUSTIN

NORTHWOODS COUNTY ROAD DISTRICT

NORTHWOODS at AVERY RANCH
AUSTIN, TEXAS



North

SHEET FILE: T:\2009\11\03\NORTHWOODS\NORTHWOODS_County_Road_District\11-03-10\11-03-10-01.dwg

Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.